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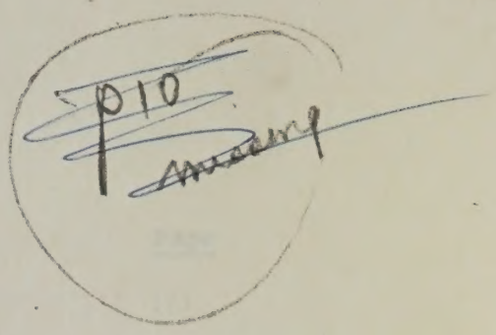

B R I E F

to

THE ROYAL COMMISSION

on

THE WORKMEN'S COMPENSATION ACT

Submitted by the

UNITED STEELWORKERS OF AMERICA

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September 15, 1966.

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SUBMISSION OF

UNITED STEELWORKERS OF AMERICA

to

THE ROYAL COMMISSION OF THE WORKMEN'S COMPENSATION ACT

15 September, 1966.

INTRODUCTION

Mr. Commissioner:

We appreciate the opportunity to appear before you on behalf of the members of the United Steelworkers of America in the Province of Ontario.

Our union, the largest in Canada, operates in every province and represents approximately 130,000 employees. In the Province of Ontario we bargain for over 90,000 employees in the basic steel industry, non-ferrous metal mining and smelting and the aluminum and steel fabricating industries. We are affiliated with the central labour bodies, both nationally and provincially: The Canadian Labour Congress and The Ontario Federation of Labour.

Our union has had a long and close association with The Workmen's Compensation Board. While we are critical of many aspects of the legislation under which the Board operates, as indicated in this submission, we should, nevertheless, like to record here our conviction that the basic conception underlying the legislation is sound. We believe that despite all inadequacies of which we are critical the Act has well served the workmen, employers and general public of Ontario.

Workmen are assured that payment of compensation for industial injuries is prompt and certain, without lengthy and costly legal battles to establish liability and the apportionment of blame. Employers have similarly been spared long and expensive law suits and small employers particularly have avoided the danger of being ruined by serious accidents. The "insurance" provided through the Board has been both cheap and efficient. The public has been spared the heavy welfare costs that would otherwise have been necessary had there been no scheme of workmen's compensation.

We should like to emphasize that the Act is a Workmen's Compensation Act. Its primary purpose is to ensure that workmen are properly compensated for industrial injuries and diseases. It does not exist, as one employers' group has stated, "for the sole purpose of administering funds provided by employers in the cause of employee compensation and accident prevention." (brief of Ontario Forest Industries Association, p. 2).

Finally, we should like to commend the members of the Board and its staff for the fine job we believe they are doing, given the legislative framework within which they have to work. We have always enjoyed a good relationship with them and have been impressed with the conscientious way in which their work is done.

ADDITIONAL COVERAGE

The Commission's attention is respectfully drawn to the fact that there is, at present, no coverage under The Workmen's Compensation Act for people engaged in rescue work, such as in mining accidents, for people called out to fight fires under The Fires Extinguishment Act (R.S.O. 1960, c. 149) or for others who may be engaged in protecting or attempting to protect life or property in case of an accident, fire, explosion etc.,(except the provisions in sec. 122 for those called on to assist peace officers). We strongly feel that all such persons should be protected under the Act and should be entitled to compensation and medical aid for injuries received during such hazardous work. (We understand that people injured while fighting fires under The Fires Extinguishment Act are in fact compensated as though theywere employees of the Crown but so far as we are aware there is no legislative authority for doing so and we feel that their entitlement should be clearly spelled out in the Act.)

Other provinces have taken steps to cover some of these gaps. In Manitoba the definition of "workman" in Section 2 (1) (t) of the Act specifically includes a person ordered to assist in fire fighting under The Fire Prevention Act. In Alberta, sec. 49 of the Act provides that workmen injured while doing rescue work in mines or other industries after an explosion, fire, accident or other catastrophe shall not only receive compensation but that such compensation shall be computed at 100% of earnings rather than at 75%. The definition of "workman" in sec. 2 of the B.C. Act includes not only people actually engaged in rescue and protective work after an accident or fire but also includes persons taking approved training in mine rescue work. The P.E.I. Act, sec. 1 (t) contains a similarly extended definition of "workman".

ELIMINATION OF WAITING PERIOD

It is respectfully submitted that the waiting period of three days, now provided for in sec. 3 of the Act, should be reduced to the day of accident. Several other provinces have reduced the waiting period under their Acts to one day, namely, Alberta, Manitoba, Newfoundland, Prince Edward Island and Saskatchewan. These provinces have, for some years now, successfully operated on this basis without any of the serious consequences which had been predicted if the waiting period were so reduced.

In the 1950 Report on The Workmen's Compensation Act, by the Honourable Mr. Justice W.D. Roach, some of the arguments for retaining what was at that time a seven-day waiting period were stated at page 19 of the Report. They included the contention "that the expense of administering compensation to those whose injuries resulted in disability which lasted less than seven days would be out of all proportion to the benefits received by them". The Commissioner stated this to be his primary reason for not recommending a reduction of the waiting period below four working days.

The costs of administration in those provinces listed above, which have adopted a one-day waiting period, cannot be compared directly with the costs of administration in Ontario because the general heading "Administration Costs" includes different things in the different provinces. However, one measure of the effect of a reduction of the waiting period on administration costs can be obtained by a comparison of the administration costs of the Ontario Board before and after 1951 when the waiting period was reduced from seven to five days (Stat. of Ont., 1951, c. 95, s. 1) and before and after 1963 when the waiting period was reduced from five to three days (Stat. of Ont., 1962-63, c. 145, s. 2). The costs of administration of the Ontario Board in the relevant years are as follows:

1950	9.8%	(1950 Annual Report, pp. 6,8)
1951	9.7%	(1951 " " pp. 6,8)
1952	8.3%	(1952 " " pp. 6,9)
1962	7.5%	(1962 " " p. 2)
1963	7.2%	(1963 " " p. 2)
1964	6.9%	(1964 " " p. 2)

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It would appear from the above figures that the contention that the reduced period would in itself result in greatly increased administration costs has not been borne out by the experience of the Ontario Board itself.

ABOLITION OF THE RESTRICTION ON COMPENSATION TO LOSS OF EARNINGS

It is our respectful submission that compensation should not be restricted to loss of earnings. Under Section 3 (1)(a) no compensation is payable unless a workman is disabled for at least three days "from earning full wages". If his injury does not disable him from earning full wages, he is entitled to no compensation at all --- even though his injury may be permanent and seriously interfere with his enjoyment of life. Compensation is restricted under the Act to pecuniary loss; no compensation is payable for personal loss or for many of the things a court would take into consideration in awarding general damages in personal injury cases. We feel that the provision for compensation under the Act in place of the individual's right to bring an action is a sound one. But we see no reason why an injured person should receive less under the Act than he would be entitled to if he could bring an action for damages.

The general principle applied in the courts for the assessment of damages was stated by Cockburn, C.J. in Fair v. London and North Western Rail. Co. (1869), 21 L.T. 326.

> "in assessing (the) compensation the jury should take into account two things: first, the pecuniary loss (the plaintiff) sustains by the accident; secondly, the injury he sustains in his person, or his physical capacity of enjoying life."

Some of the aspects of personal loss taken into account in assessing damages at common law are stated in the second edition of "Damages for Personal Injury" by Munkman at p. 75:

> "Where there is permanent injury, the damage to be assessed may include any or all of the following elements: (i) total loss, or impairment, of a limb or other specific part of the body, or impairment of the body as a whole; (ii) the shock of the injury, sometimes followed by neurosis; (iii) physical pain at the time of the injury, during surgical operations, and perhaps during the rest of life; (iv) mental distress; (v) inability to look after the bodily needs of live; (vi) disfigurement, by scars or mutilation; (vii) loss of the joys of life, such as sport, recreation, music, or the mere ability to walk about; (viii) shortening of the natural term of life".

None of these elements is taken into account in awarding compensation under the Ontario Act and the injured workman is denied the right to recover anything for them in the courts. A couple of examples will illustrate the point.

An attractive young single girl may be painfully injured in a plant by scalding steam so that she is disfigured for life. She may be disabled from earning full wages for a period of only two or three months. If she were able to bring an action against her employer, the court would undoubtedly award a substantial amount, not only for her pain and suffering, but also for her disfigurement. But under the Act there is no authority to pay her anything for either the pain and suffering or for the disfigurement. Compensation must be restricted to her loss of earnings and indeed not to her full loss but to only a percentage of it.

An employee may spend his working life in a plant where the noise level is such that gradually, over the years, he becomes deaf. In many such cases of so-called "industrial deafness" his earning capacity is not adversely affected at all; he can go on working at the same job until retirement. But he suffers a very great personal loss in his capacity to communicate with his family and his friends; to enjoy music and entertainment, etc. There is no authority under the Act to pay him any compensation because his injury has not disabled him from earning full wages.

We understand that the Board will pay compensation for industrial deafness six months after the workman leaves the employment involving the noise exposure. The Board will also, in certain cases, supply hearing aids. The legislative authority to do either is, we submit, most inadequate, if not non-existent.

Dr. Keith K. Neely of the Defence Research Medical Laboratories has made the following comments on industrial deafness:

> "There is considerable evidence, both clinical and experimental to indicate that exposure over a period of years to high-intensity noise whose overall SPL (sound pressure level) exceeds 85 dB (decibels) may cause permanent hearing loss. Some individuals who are highly susceptible to noise, however, may

sustain permanent losses with less exposure to lower levels of noise....

"The development of such hearing loss is usually so gradual and in fact so insidious that the individual is usually unaware of his condition until it has become serious. Unfortunately, deafness of this type, called nerve or perceptive deafness, is not reversible...

"Hearing losses due to exposure to high-intensity noise whose overall level does not exceed 150 dB can, in most instances, be prevented by using adequate hearing conservation procedures.....

"With the knowledge, procedures and equipment available today, there is no need for most individuals exposed to high-intensity noise (85 - 150 dB) to suffer permanent deafness."

Report of Third Annual Conference on Occupational Health and Safety, CLC, Nov. 1964, pp. 36, 38, 39, 48.

Unfortunately, since industrial deafness is not compensable under the Ontario Act, and since the Act has removed the workman's right of action for such injuries (as for all others) there is little or no incentive for employers to take measures to abate noise or to institute hearing conservation procedures.

One of the anomalies of the Act's restriction of compensation to pecuniary loss arises in third party liability under Section 9. Where the workman elects to claim compensation, the individual employer (if under Schedule 2) or the Board (if the employer is under Schedule 1) is subrogated to the workman's right to maintain an action against the third party. But in any such action there is no restriction on the damages recoverable such as applies to compensation under the Act and the employer (or the Board as the case may be) may claim and obtain compensation for the losses the workman has suffered over and above the pecuniary loss for which the Act makes provision. A Schedule 2 employer may, and often does, collect more than he is required to pay the workman under the act --- compensation not only for the loss of earnings over the 75% to which the claimant under the Act is restricted but also for the personal loss, including pain and suffering etc., thus making a "profit" out of his employee's injury. Sometimes the excess is paid over to the workman, sometimes it is not. The Honourable Mr. Justice W.D. Roach recommended in his report (pp. 79-83) that the Act provide that such sums, recovered in excess of compensation paid, be paid over to the injured claimant but this proposal was opposed by employers and his recommendation has not been implemented.

It is submitted that workmen should be fully compensated for their injuries, not just in cases of third party liability, but in every case, and that they should receive compensation, not for loss of earnings alone but for all personal loss such as disfigurement, hearing loss, pain and suffering, etc., as well.

The Commission's attention is drawn to the fact that other provinces have made some concessions in this direction. The Alberta Act (sec. 46 (4)) provides that:

> "the Board may, where a workman has been seriously and permanently injured about the face or head or otherwise permanently injured, recognize an impairment of earning capacity and may allow lump sums or periodical payments or both, as compensation".

The Manitoba Act (sec. 28 (2)) has a similar provision applicable in such cases even though "the amount which the workman was able to earn before the accident has not been substantially diminished". Section 22 (2) of the B.C. Act is to like effect. Section 39 (1)(a) of the Nova Scotia Act and Section 6 (1)(a) of the Prince Edward Island Act give the respective Boards of those provinces discretionary authority to pay compensation "notwithstanding that such personal injury does not disable the workman for four days from earning full wages at the work at which he was employed."

Other extensions we recommend, beyond loss of earnings and medical aid, are compensation for any articles of clothing destroyed or damaged as a result of a compensable accident and for dentures, artificial limbs or eyeglasses broken in such an accident. If eyeglasses, artificial limbs or dentures are actually being worn when a compensable accident occurs, in which they are broken, the Board's present practice is to make an allowance for them. There should, however, be legislative authority for such payment and it should be extended to all such damage resulting from a compensable accident. Where an injury for which a workman receives compensation is of such a nature that he must wear a prosthetic device, an allowance for clothing should be paid by the Board for any additional deterioration of clothes caused by the wearing of such a device. The Board's attention is respectfully drawn to Section 22 of the Manitoba Act, Section 25 (8) of the B.C. Act and Section 50a of the Alberta Act, which contain provisions similar to those recommended here.

ELIMINATION OF SCHEDULE 2 OF THE ACT

Under Section 5 of the Act, certain employers, those covered by Schedule 2, are liable directly and individually to pay compensation and medical aid to their injured employees. They include, inter alia, municipalities, school boards, public utility commissions, public libraries, public transit companies, steamship, ferry-board and tug-boat operators, ship-building companies, telephone companies and railways as well as the Crown in right of Ontario. Because there is no registration or other record of employers under Schedule 2 until an injury to an employee is reported to the Board, there is no accurate count of the number of employers or the total number of their employees who come under Schedule 2. It is estimated, however, that the number of such employers may be between eight and ten thousand.

When he drafted the original act in 1914, the late Chief Justice Meredith, in proposing the direct liability of this group of employers, stated that he did so "in order that with the two systems working side by side, experience might demonstrate whether the collective system or that of individual liability was preferable."

It is respectfully submitted that the half a century the system has been in operation has been more than sufficient for the demonstration and that this division of Ontario employers and employees into two different classes for purposes of compensation should be brought to an end. The principle of collective responsibility, incorporated in Schedule 1, should be applied to all employers and employees in the province without distinction.

It is our impression, though we are unable to document it, that claims for compensation by employees under Schedule 2 are much more vigorously contested than claims under Schedule 1. The Honourable Mr. Justice W.E. Middleton, in his report of February 11, 1932, stated as much when, in dealing with Schedule 2, he said:

> "In the case of the railway or other large concern, while there is undoubtedly sympathy for the injured man, there is a keen and close investigation into the nature and extent of the injury received, and there is a desire to minimize the incapacity of the workman and so to minimize the loss to the

> company. There is no room for suggestion that the medical men employed by the company are not admirably qualified and thoroughly honest, but everything is viewed from the standpoint of the employer and there is not quite the same sympathetic and generous attitude as in cases where the injured man alone is considered, and the payment is made from an impersonal fund to which the employer contributes an infinitesmal fraction".

It should be noted that at the time Mr. Justice Middleton made his report, medical aid was provided directly by the railway employers' own medical staff. Despite what the learned Commissioner said about the competence and honesty of the medical men employed by the Schedule 2 employers, after some serious accidents in 1945 a change was made, effective 1 July 1945, so that thereafter medical aid for Schedule 2 employees has been provided in the same manner as for employees under Schedule 1.

The Board should be able to provide the Commission with detailed information as to the proportion of claims contested by employers under Schedule 2 as compared with contested claims under Schedule 1.

Even though there may be no difference between the compensation an injured employee receives under Schedule 2 and the amount he might have received had his employer been under Schedule 1, there are inequities in the maintenance of the two separate schedules.

Because of the greater tendency on the part of Schedule 2 employers to contest claims, there is inevitably greater delay in the payment of those claims and injured workmen thus suffer a hardship which they would not suffer if their employers were part of the collective liability system.

The greater proportion of contested claims under Schedule 2 also means that the Board's administrative costs for Schedule 2 employers must be considerably higher than for Schedule 1 employers. Total costs of administration of the Board are, however, pro-rated equally among all employers with the result that Schedule 1 employers are paying part of the higher administrative costs occasioned by Schedule 2 employers contesting a higher proportion of the claims.

In dismissing a request for the abolition of Schedule 2, Mr. Justice Roach stated at p. 84 of his report, that "There is no danger that any of the industries in Schedule 2 would be financially ruined by accidents happening to their employees." It is submitted, with great respect, that the learned Commissioner was in error. It is not at all inconceivable that a single accident, involving death and serious injury for a large number of workmen could cost hundreds of thousands and even millions of dollars in compensation and medical aid --- costs far beyond the resources of many local municipalities, public utility commissions, police commissions, ferry boat operators, etc.

Mr. Justice Roach himself, at pp. 110 and 111 of his report (in dealing with the investment Authority of the Board), refused to recommend authority for the Board to invest in debentures issued by municipal corporations in Ontario, drawing attention to the losses that had been incurred by the Board during the depression by reason of certain Ontario municipalities defaulting on their bonds!

The Commission's attention is drawn to the fact that other provinces operate their systems of Workmen's Compensation without the same division of employers into two categories as Ontario. There is no separate schedule for such employers in B.C.,for example. Certain of the employers, including the railways and Crown in right of the Province are in separate classes for rating purposes but the principle of collective liability is extended to all without distinction. Manitoba and Saskatchewan have similar provisions. In the Alberta Act, a Schedule 2 covers employment by the federal and provincial governments and the Alberta Government Telephones, Section 63 (2) of the Act relieving such employers from contributing to the reserves under the Act. It does not, however, relieve such employers from collective liability for injuries.

It is submitted that the direct liability of the employers covered by Schedule 2 of the Act is contrary to the insurance principle underlying the Act. Mr. Justice Middleton, in warning of the dangers of

a system of merit rating, said:

> "...the whole principle of collective liability is based upon the doctrine of average. It is not enough that for a year, or even a short series of years, a particular factory escapes having any serious accident. The whole principle is that the fortunate must bear some portion of the burden of the unfortunate."

This argument is just as applicable to the abolition of Schedule 2 as it is with respect to merit rating.

APPEALS

In March 1965, new procedures were instituted by the Board for the review and handling of appeals. There is now a great deal more formality in the review of cases and a more unsatisfactory procedure so far as appeals are concerned.

Previously, claims officers reviewed cases as they came in. If the claim was allowed, there was no problem. If there was incomplete information or if the officer had doubts about the circumstances of the accident, he took steps himself to obtain the information or resolve the doubt, either by letter or, in many cases, directly by telephone. In some cases he requested a local investigation by a member of the Board's staff. If there was insufficient medical information, or there was some doubt about medical aspects of the claim, he would request further medical opinion and if a difference of medical opinion existed, the matter would be referred to a medical referee under the provisions of Section 23.

If, after completing the above procedures, it was felt that the claim should be refused, it was reviewed by a committee of three senior claims specialists and any further action required to settle the question of entitlement was referred to a claims adjudicating officer to be carried out. A notice was sent to the man, indicating that his claim had been refused and whether it was for medical or non-medical reasons. The claimant could then write to the Board and have a review made by the Review Board. There was a further appeal to the Workmen's Compensation Board itself.

At all times there was informal direct access to the Board and its staff for the man or any representative who endeavoured to assist him

in the case. Union representatives, particularly, were able to obtain information from the Board, informally, and thus either explain to the man in layman's terms why it was felt that there was no point in pursuing his claim further or assist him in the preparation of his case for consideration by the Review Board or by the Board itself. The Board's staff were very helpful in providing assistance in the presentation of such cases.

Now, under the new procedures instituted in March, 1965, a claims adjudicating officer must make his decision without obtaining further medical or non-medical information as referred to above. A blunt written notice is sent to the man, telling him that his claim has been denied and advising him of his right to appeal. The appeal goes to a review committee and if its decision is adverse, the claimant is so informed and told that he may have a summary of the evidence considered by the Review Committee for the purpose of an appeal to the Appeal Tribunal. He must then write for the summary and use it as a basis for his case.

The internal system of obtaining additional information and of having the case reviewed before the claimant is told that entitlement has been refused, has apparently been abolished. The whole system of review and appeal is now on a much more formal basis and the ready liaison between representatives acting on behalf of claimants amd members of the Board and its staff no longer exists.

One of the most unsatisfactory aspects of the new formal system is the summary of evidence provided to the man and on which he must base his appeal to the Appeal Tribunal.

The very fact that it is a summary means that it is incomplete --- neither he or his representative is allowed access to the whole case against him. The summary, furthermore, has been prepared by the very body (namely the Board) who have made the decision which is being questioned. In such cases it would be surprising if the objectivity of the summary were not called into question.

Moreover, the summary of medical evidence is often couched in such technical language that it is difficult for any layman to understand the basis on which the decision was made. One such example of a summary was cited in the Legislature on June 20, 1966, at page 4965 (claim #6444703):

> "X-rays showed a large amount of spurring of the lumbar vertebra. The L5/S1 disc was thinned and the IV foramina at this level were congested. There were also changes at L4/5. The spurring occupied most of the lumbar spine. Schmorl's nodes present in the upper lumbar spine. A diagnosis of lumbo sacral strain was made on the basis of old degenerative disc disease and osteoarthritis of the spine."

It is respectfully submitted that the new review and appeal procedures should be revised; the summaries eliminated and the former direct and informal access to the Board be restored.

SCALES OF COMPENSATION

It is our respectful submission that the rates of benefits under the Act, both to the injured workman in case of injury and to his survivors in case of death are too low and should be increased. We feel that this is true with respect to the restriction of compensation to 75% of earnings under Sections 40 and 42 for total disability and to the 75% of the loss of earnings under Section 41 for partial disability. The fixed monthly payments to widows and children, the lump sum payments to widows and foster mothers, as well as the sum payable for burial expenses under Section 37 are far too low. The $6,000 limitation to be used in the calculation of average annual earnings for the purpose of determining rates of compensation should be removed. Each of these matters is dealt with separately below.

(a) Raising Restriction on Compensation from 75% to 85% of Earnings

When the Act came into effect on January 1, 1915, the maximum rate of compensation was 55% of earnings. Five years later, in 1920, this was increased to 66-2/3% and this rate was maintained by all Canadian provinces for nearly 25 years. All suggestions that any higher percentage should be paid were met with the objection that any higher rate would lead

to widespread malingering and fraud by employees trying to magnify the extent of their injuries so as to remain on compensation and avoid returning to work. However, when one province increased the percentage to 75%, without any noticeable increase in malingering, other provinces, including Ontario in 1950, followed suit until the 75% rate became common to all ten provinces and to the Yukon and Northwest Territories.

It is submitted that the 75% rate is still too low and should be increased to 85% of earnings. There is no reason why a workman, injured in the course of his employment, should not be more fully compensated for his loss of income. To penalize the vast majority of injured workmen, by denying them adequate compensation because of the danger of malingering on the part of a small minority, is grossly unjust. In schemes for the payment of welfare and social assistance, there is sometimes the danger that a small minority may abuse them. But that is no reason for denying adequate assistance to the majority. Most employees would prefer to know that they were earning their own way than that they were living on compensation to which their physical condition did not entitle them.

Because the workman, who is receiving a total disability pension, is relieved of payments for income tax, unemployment insurance and transportation to and from work, it is recognized that compensation payments do not have to be 100% of earnings in order to compensate him fully for his loss of earnings. It is submitted, however, that he is more nearly fully compensated if he is paid 85% rather than 75%.

In his report, Mr. Justice Roach, at pp. 27 and 28, dismissed the suggestion that the percentage of compensation, whatever it might be, should be applied to the net earnings of the workmen (i.e. after deducting income tax, etc.) instead of to the gross earnings. He cited two 1946 decisions in support of his contention that in the assessment of damages for loss of earnings, no deductions should be made in respect to income tax or unemployment insurance premiums for which the plaintiff would have been liable had he been able to continue in employment.

However, in judging the proportion of earnings on which compensation should be based, the argument persists that such items should be taken into account in order to ensure that the workman on compensation does not receive more than he would have received had he remained at work. (See briefs of Ontario Forest Industries Association, pp. 4 and 5; Retail Council of Canada, para. 8, and Ontario Mining Association, sec. 2).

Moreover, it has been held in an English case, subsequent to those cited by Mr. Justice Roach, (British Transport Commission v. Gourley (1956) A.C. 185) that in assessing damages for loss of earnings, a deduction must be made on account of the income tax which has been, or will be saved upon those earnings. Incidentally, the learned author of the second edition of Munkman on Damages for Personal Injuries states (p. 58) that "on the other hand, under the authorities as they stand at present, which appear to be consistent with Gourley's case, no deduction must be made for pensions or for money received under an accident policy, or for charitable assistance received either from relatives or from the general public." This latter comment is drawn to the Commission's attention, in view of the suggestions made in several briefs (e.g. that of The Retail Council of Canada, para. 9), that benefits to be made under The Canada Pension Plan should be taken into account in determing levels of payment under the Workmen's Compensation Acts.

For the above reasons, the following comparisons of compensation payments, as compared with "net earnings", are cited for the assistance of the Commission in this matter. The examples cited are similar to those referred to by Mr. Justice Roach, except that present levels of income tax, unemployment insurance and transportation are used rather than those in effect at the time of his report.

1. Unmarried Man, No Dependants

Gross Yearly Earnings:				$ 3,000.00
Income Tax Deductions for Inc. Tax Purposes:				
1. Basic Exemption	$ 1,000.00			
2. Med. Exp. & Donations	100.00			
3. Union Dues	60.00	$1,160.00		
Taxable Income		1,840.00		
Income Tax	227.10			
Old Age Secur. Tax	73.60		290.70	
Unemployment Insurance (52 wks. at 72¢)			37.44	
Transportation to and from work			75.00	403.14
Net Yearly Earnings ($3000 less $403.14)				$2,596.86
Compensation at 75% of gross earnings				$2,250.00
" " 85% " " "				$2,550.00
" " 90% " " "				$2,700.00

2. Married Man, Two Children

Gross Yearly Earnings				$4,916.00*
Income Tax Deductions for Inc. Tax Purposes:				
1. Basic Exemption	$2,600.00			
2. Med. Exp & Donations	100.00			
3. Union Dues	60.00	$2,760.00		
Taxable Income		2,156.60		
Income Tax	291.00			
Old Age Security Tax	86.28		$ 377.28	
Unemployment Insurance (52 wks. at 94¢)			48.88	
Transportation to and from work			75.00	501.16
Net Yearly Earnings ($4916.00 less $501.16)				$4,414.84
Compensation at 75% of gross earnings				$ 3,687.45
" " 85% " " "				$4,179.11
" " 90% " " "				$4,424.94

*Based on average weekly wages in Manufacturing in Ontario, Jan. 1966 of $94.55 - from Man Hours & Hourly Earnings, January, 1966. D.B.S. Table 6.

3. Married Man, Four Children

Gross Yearly Earnings				$ 6,000.00*
Income Tax				
Deductions for Inc. Tax Purposes:				
1. Basic Exemption	$ 3,200.00			
2. Med. Exp. & Donations	100.00			
3. Union Dues	60.00	$3,360.00		
Taxable Income		2,640.00		
Income Tax	370.00			
Old Age Secur. Tax	105.00		$ 475.00	
Unemployment Insurance (52 wks. at 94¢)			48.88	
Transportation to and from work			75.00	599.48
Net Yearly Earnings ($6,000 less $599.48)				$ 5,400.52
Compensation at 75% of gross earnings				$ 4,500.00
" " 85% " " "				$ 5,100.00
" " 90% " " "				$ 5,400.00

* Maximum permissible earnings at present under Sec. 44 (1)

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As the above examples show, an injured workman receiving compensation even at 85% of his average earnings will still not be in as good a financial position as he would have been had he continued at his employment, even after making allowance for income tax, unemployment insurance and transportation to and from work. He would, however, be much more equitably compensated than under the present rates and it is therefore recommended that the maximum rate of compensation be increased from 75% to 85%.

It has been suggested in other briefs to your Commission (see the submissions of Ontario Division of Canadian Manufacturers' Association, p. 8 and of Ontario Mining Association, p. 3) that the present 75% limit on compensation closely approximates the employee's take-home pay when earning. The above examples will show, we believe, that the 75% rate is not adequate for this purpose. The recommended rate of 85% would more closely approximate the employee's take-home pay while employed.

(b) Increasing Pensions to Disabled Workmen and Their Survivors

It is respectfully recommended that a provision be made in the Act to increase the rate of pension to disabled workmen and their survivors in accordance with increases in the cost of living. It is a well established fact that there is long-term general decline in the value of money. This is reflected in and may be measured by the increase in the cost of living. If a scale of compensation is adopted today, which is equitable in relation to the present value of the workman's loss of earnings, it will not be equitable 10 years hence because of this phenomenon. For example, a person awarded a monthly pension of $100 in January 1956 would find his pension reduced in real terms in January 1966 to $82.71.

In order to remedy this situation, British Columbia has recently accepted a recommendation of the Tysoe Commission to incorporate a cost of living formula in permanent disability awards. Under a new section of the B.C. Act, for each rise of 2% in the Consumer Price Index, pensions to disabled workmen, dependent widows, invalid widowers and all allowances to dependent children are to be increased by 2% and adjustments under this formula are to be reviewed annually. It is recommended that your Commission give favourable consideration to the adoption of a similar formula in Ontario.

It should be noted, so far as cost to the employer is concerned, that the lack of any provision hitherto to relate pensions to the increased cost of living which has operated in the employer's favour. The pension award,which cost him $100 in January, 1956, cost him only $82.71 in January, 1966. The employer has enjoyed decreasing compensation costs as the value of money steadily declines.

It is noted that briefs submitted on behalf of some employers have contained complaints that the retroactive effect of periodic increases in compensation rates have been unfair. It is suggested, however, that such periodic increases, even when they are retroactive, are more than compensated for by phenomenon referred to above.

It has been suggested by some employer groups (see brief of Ontario Federation of Construction Association, para. 2, pp. 3 and 4) that any additional costs of upgrading compensation benefits should be paid by government out of the Consolidated Revenue Fund. In view of the savings which employers make on compensation because of the decreasing value of money, as indicated above, it is suggested that it is not at all inequitable that the whole cost of increased compensation should be paid by employers. It seems to us that the total cost of reimbursing, so far as money can do so, employees for injuries arising out of their employment should be a cost borne by industry itself and not by the general public.

May we further point out, for the Commission's consideration, that the fixed level of pension for the permanently disabled takes no account of general increases in the level of productivity and of incomes in the community. Neither does it take into account the personal advances that would have been possible for the workman had he not been injured. Aside altogether from the decreasing value of his pension because of increases in the cost of living, as referred to above, there tends to be a gradual decline in the relative value of his pension for these reasons.

It is noted that a number of briefs, submitted to your Commission on behalf of employers and employer groups, have urged that payments, under the Workmen's Compensation Act, should be no substitute for social welfare (see brief of Ontario Division The Canadian Manufacturers' Association, paras. 6 to 8, 19 to 21 and 26; CNR-CPR brief p. 6 and Construction Association's brief, para. 2). It has been contended that the costs of increased benefits in respect of past injuries and cost of full compensation for temporary partial disability, where suitable light work is not available, should be treated as social welfare and not be paid by Workmen's Compensation funds.

It is respectfully submitted that such contentions are not valid. The total cost of fully compensating a workman for injuries suffered during employment is properly chargeable to the industry concerned.

It is noted, with interest, that the very same briefs which contend that Workmen's Compensation funds are not to be used to meet the so-called "social welfare" costs referred to above, have no hesitation in suggesting that social welfare schemes, such as OMSIP and the Canada Pension Plan should operate to reduce the liability of employers to pay full compensation (see submission of Ontario Division The Canadian Manufacturers' Association, para. 33 and brief of Contruction Association, paras. 7 and 8).

(c) Temporary Partial Disability

Under Section 41 of the Act, the compensation payable in the event of temporary partial disability is 75% of the difference between the actual average weekly earnings earned by the workman before the accident and "the average amount that he is earning or is physically capable of earning, as determined by the Board, in some suitable employment or business, after the accident....". The medical examiner may report that an injured workman is not fully disabled but that his disability is only, say 50%, and that he therefore is capable of "light work". Unfortunately, his employer has no suitable light work available for him in which he can use his 50% capability. He is not eligible to receive any unemployment insurance, yet his compensation is rated at only 75% of 50% of his former earnings. Thus an employee whose remuneration was $100 per week but who is injured so that his physical capacity is reduced to 50% and who is unable, as a result of his injury, to obtain any employment of any kind, receives only $37.50. It is submitted that in such cases, an employee should receive his full compensation so long as his employer is unable to give him employment commensurate with his physical abilities.

It is noted that the basic principle underlining the Act is compensation to the injured employee for loss of earnings resulting from his injury. In Section 41, however, there is a serious deviation from this principle so that an injured workman is compensated not in relation with his loss of earnings but in relation to his degree of disability.

(d) Payments to Widows, Invalid Husbands, Foster Mothers and Children

At present the widow of a workman who has lost his life, as a result of an accident arising out of his employment, receives a monthly pay-

ment of $75. If she has one or more dependent children, she receives an additional $40 per month for each child. It is respectfully submitted that a widow with school or pre-school children cannot afford to pay for accommodation alone out of such sums. She must, therefore, seek employment herself, which may be virtually impossible if one or more of her children are of pre-school age, or she must depend on public welfare or private charity. There is no excuse for the treatment, in this fashion, of the survivors of workmen who lose their lives as a result of their employment. There is absolutely no reason why the survivors should not be maintained in the station in life to which they had been accustomed, and the cost fully borne by the industry to which the husband and father has given his life.

With that end in view, it is respectfully submitted that compensation payments to surviving dependents of workmen who lose their lives in industrial accidents bear a relationship to the employees' earnings.

We respectfully request that the Commission recommend that a widow (or invalid husband, as the case may be) should receive compensation at the rate of 75% of the employee's earnings or a minimum of $100 per month so long as there is no re-marriage. Allowances for dependent children should be increased proportionately.

Where dependent children continue to attend school or other educational institution, benefits under the Act should be continued beyond the age of 16.

The Commission's attention is drawn to the fact that payments to the surviving widow, or invalid widower, are $85 per month in Alberta, $115 per month in British Columbia, $90 per month in Nova Scotia, $110 per month in Saskatchewan, $90 per month in the Northwest Territories and $100 per month in the Yukon. Payments to dependent children are $45 per month in Alberta and Saskatchewan. Provision is made, in British Columbia, New Brunswick, Quebec and the Yukon, to continue payments for dependent children beyond the age of 16, where they are attending school.

(e) Burial Expenses

It is respectfully submitted that the present allowance contained in Section 37 (1) of a maximum of $300 for necessary burial expenses is grossly inadequate. Enquiries made recently of several major funeral directors in the City of Toronto show the following basic charges:

Name	Indigent or Pauper Funeral	Other*
Jerrett Funeral Chapels Ltd.	$250.00	$ 400.00
Humphrey Funeral Home & Chapel Ltd.	250.00	$395.00 - $450.00
Wm. Speers Funeral Directors	200.00	(no quotation)
Turner & Porter Funeral Directors Ltd.	250.00	398.00 - 495.00
Earle Elliott Funeral Homes	240.00	397.00 - 495.00

* - Prices vary according to caskets.
(There is an extra charge for more than one family car).

It will be observed that for the $300 allowance made under the Act, the family of a workman, killed as a result of an accident arising out of his employment, can only obtain for him a pauper's funeral.

The cost of a cemetery plot is over and above the costs referred to above. The minimum cost of such plots varies from $75 up, and opening and closing the grave is an additional $45 in the summer time, and $55 in the winter time. It will be seen that the basic cost of a modest funeral will run between $500 and $600. In addition to such basic costs there are, of course, the other miscellaneous costs such as wreaths, flowers, extra cars, newspaper notices, church services, gratuities for clergymen, etc. It is therefore recommended that the $300 provided for burial expenses, Section 37 (1)(a) be increased to $700.

The Commission's attention is drawn to the fact that in the Province of Quebec, Section 34 (1) of their Act provides an allowance of

tion of the body and a $300 lump sum payable to the widow.

Section 37 (1)(a) of the Ontario Act provides for the payment of a $300 sum for the necessary expenses of burial only. It is recommended that payment be authorized for cremation as well. Where cremation, rather than burial is desired, the practise at present is for the Board to make payment on the same basis as for burial. We feel, however, that this should be specifically provided for in the Act and not be subject to the discretion of the Board. We may point out that section 18 (a) of the British Columbia Act authorizes payment for cremation as well as for burial.

(f) Removal of $6,000 Limitation on Earnings

The maximum annual earnings on which compensation may now be based is fixed at $6,000 under Section 44 (1). Originally this maximum was fixed at $2,000 and has been increased over the years. The precise reason for fixing such a maximum is not clear to us. Perhaps it was an attempt to distinguish between "workmen" and other employees. The comments made by Mr. Justice Roach in his report at pp. 25 and 26, where he deals with this question, imply as much.

If this is the purpose, the present provisions of the Act do not accomplish that purpose and the application to a limit to earnings, as provided in Section 44, does not distinguish between two groups of employees. The Act applies to all "workmen" and the definition of "workmen" under Section 1 (1)(u) of the Act includes every person who works under a contract of service, whether by manual labour or otherwise, with the exception of an "executive officer of a corporation". There is no distinction based on earnings.

The only practical effect of the provision of Section 44 (1) is seriously to limit the compensation to which the more highly skilled and more highly paid employees may be entitled. Chief Justice Meredith, in a quotation, cited at p. 26 of Mr. Justice Roach's report, attempted to avoid any such restriction by stating that he had chosen the then

recommended limitation of $2,000 per annum "because that sum is probably the maximum amount earned in a year by the highest paid wage earner". If a maximum is to be written into the Act (and it is our respectful contention that it should be removed altogether) then the $6,000 limit in the present Act does not by any means represent the maximum amount earned in a year by the highest paid wage earner.

Under the recent collective agreement signed between the United Steelworkers of America and The Steel Company of Canada, a 1st helper on the 500 ton open hearth, in Hamilton, Job Class 28, at an hourly rate of $4.589, plus 30% incentive earnings, would earn in the course of each year, without any overtime whatsoever the sum of $12,729.60. Under a recently negotiated contract a journeyman plumber, in the City of Hamilton, making $5.05 would earn in a course of a normal working year, without any overtime, the sum of $10,504.

Average annual earnings based on average weekly wages in the month of January, 1966, in six Ontario industries are shown in the following table:

Petroleum & Coal Products	$7,177.04
Engineering (other than highways, bridges and streets)	6,412.12
Motor Vehicle Assembling	6,396.00
Agricultural Implements Manufacturing	6,228.04
Special Trade Contractoring	6,115.08
Industrial Chemical Manufacturing	5,998.20

- (Man Hours and Hourly Earnings D.B.S. January, 1966, Table 6)

It will be obvious that since the above are <u>average</u> earnings, the highest paid wage earner in each group will receive an annual income substantially in excess of the $6,000 limit, now contained in the Act.

The inequity of the present limitation is readily apparent if one considers the position of one of the more highly paid employees, whether he is a wage earner or not. Suppose the superintendent of a plant, who is not "an executive officer of the corporation" but whose annual

income is $20,000 per year, is permanently disabled through personal injury by an accident in the plant. He is entitled to compensation under the Act but the maximum he can receive is $4,500 per year.

It is respectfully recommended that this limitation be eliminated from the Act, both in respect of Section 44 and of Section 99.

INDUSTRIAL DISEASES

When the Act first came into effect, in 1915, only six diseases were named as Industrial Diseases. As the knowledge of industrial diseases has increased, other diseases have been added from time to time until Schedule 3 now contains a list of 15 broad headings of such diseases together with many sub heads so as to cover poisoning and its sequelae by various substances, as well as various categories of pneumoconioses, diseases due to radioactive substances and different types of ulceration.

Experience in other provinces suggest that the present list of industrial diseases, set out in Schedule 3, is still inadequate. Indeed some of the recommendations for additional coverage made by Mr. Justice Roach, 16 years ago, have not yet been accepted - such as lung cancer, where the workman is employed in a process by which he is subjected to the inhalation of concentrated gases from coal, tar or pitch and silicosis in every process where the workman is subjected to the inhalation of silica dust created by the nature of the work performed by him or others.

The Board's present practice is to pay compensation for many industrial diseases not now covered by Schedule 3 on the ground that they are "peculiar to or characteristic of a particular industrial process, trade or occupation". We feel that such a practice is inadequate. A person may incur a disease caused by conditions of his employment without being able to prove that the disease is "peculiar to or characteristic of" the particular occupation. To the extent that specific diseases and processes associated with each are named in Schedule 3, any doubt or confusion will be eliminated.

Some of the diseases compensable in other provinces but not specifically covered in Ontario include the following:

Name of Disease	Description of Process	Province
Occupational deafness	Any industry involving prolonged and continuous exposure to excessive noise	B.C.
Asbestosis	Any industry or process where there is exposure to asbestos fibre	B.C., N.B. & Quebec
Asthma & Respiratory irritations	Exposure to organic or fibrous dusts	B.C.
Bovine Tuberculosis	Laboratory work or handling of animals	Sask.
Undulent Fever	Laboratory work or handling of animals or carcasses	B.C., N.B. P.E.I.,Que. & Sask.
Bronchitis & Pulmonary oedema	Any process using oxyacetyline or electric arc for cutting or welding	B.C.
Circulatory disturbances of the extremeties	Muscular effort at low temperatures or handling cold materials	B.C.
Conjunctivitis	Exposure to dust, heat, gases, fumes, vapours, mists or smoke	B.C.
Dermatitis	Any process involving contact with certain named substances	B.C., Alta., & Man.
Formaldehyde poisoning	Any process involving the use of, or direct contact with formaldehyde and its preparations	B.C. & Sask.
Salmonellosis	Employment in hospitals, sanatoria, etc.	B.C.

PRE-EXISTING PHYSICAL CONDITIONS

In dealing with this subject, at p. 46 of his report, Mr. Justice Roach said:

> "Illustration: a workman suffering from diabetes may suffer a very minor injury to a toe due to a weight falling on it. His diabetic condition aggravates that injury and it becomes so serious that the whole foot has to be amputated.
>
> "The Board informed me that in the case illustrated it would consider the loss of the foot as having been partly caused by the pre-existing diabetic condition and would award to the workman only fifty per cent of the amount which would normally be awarded to him for the loss of a foot.
>
> "In my opinion such a policy is not authorized by the Act.
>
> "Section 2 (1) provides that compensation shall be awarded for injury caused by accident. In the case illustrated the loss of the foot was not caused by the diabetic

condition within the meaning of those words in the section. It is true that without the previously existing diabetic condition the workman would not have lost his foot but the real and effective cause of the ultimate injury was the weight falling on the toe, and not the diabetic condition.

"All workmen are entitled to the full protection of the Act without any discrimination based on their physical condition."

He supported his position by reference to the well-known "thin skull" illustration and to two Court of Appeal cases in England. He recommended that the Act be amended to provide that where an accident causes an injury aggravating some pre-existing physical condition, the workman should be compensated for the full injuries resulting. His recommendation has not been implemented and it is respectfully submitted that it should be.

This matter is extremely important because of the fact that very often the determination by the Workmen's Compensation Board, as to whether an injury is caused by accident arising out of employment, is based on medical opinion and because of the basically different approach between doctors and lawyers on this subject. This difference was the subject of a recent short article in The Canadian Bar Journal for August, 1966, at p. 306 by Thomas O. Griffiths. Mr. Griffiths commented at p. 308 as follows:

"CAUSE

"In tort law the search is for the proximate cause of a resulting condition or effect. Thus, if as a result of an injury a latent condition becomes a disability the injury at law is the cause, i.e. the proximate cause is virtually synonymous with the medical phrase "precipitating factor" it is certainly not what the doctor means by the word "cause".

"To take a chemical analogy, if a test tube contained three re-agents and a fourth was added and an explosion resulted, to the tort lawyer the addition of the fourth re-agent and not the pre-existing re-agents would be the real or proximate cause of the explosion. However, to the physician it would be the three pre-existing re-agents or etiology which would be the "cause" of the explosion and the fourth re-agent would be merely the precipitating factor.

"OTHER CAUSES

"Similarly, once it has been established that the act of the wrongdoer was the proximate cause of the damage or disability the "thin skull rule" applies and it is no defence to argue that such damage or disability might have resulted later from contingencies other than the tortious act."

The attitude of the Board's doctors to this question was seen during the course of an address to a Workmen's Compensation Seminar, sponsored by the Ontario Federation of Labour in 1963, by Dr. M.G. Lester, a Consultant Dermatologist of the Board (see report of Seminar at p. 26). Dr. Lester was dealing with the interplay between pre-existing skin diseases and occupational exposures. He mentioned the cases where persons were susceptible to exzema and the difficulty a medical officer had in trying to determine whether it was the occupational exposure which caused the resulting dermatitis or whether it was the pre-existing skin condition. He said "Because, at this point again, the patient's own body is responsible, and therefore I feel rightfully that the Compensation Board should not be held responsible for this part of his skin problem". It is more than likely that Dr. Lester's view on the causes of injuries are shared by other doctors on whose opinion the Board relies to determine whether or not a particular injury is compensable. Hence the importance of the recommendation made by Mr. Justice Roach.

ACCIDENT PREVENTION

As Mr. Justice Roach stated at p. 91 of his report, "The prevention of accidents in industry is a subject of no less importance than is compensation for injuries sustained as a result of such accidents. It is infinitely more important that, where possible, an accident should be prevented than that it should be permitted to occur and the victims be compensated. It is therefore appropriate that an Act, which provides compensation to the victims of industrial accidents, should contain provisions dealing with prevention of such accidents".

The learned Commissioner went on to state "In my respectful opinion the present provisions of the Act dealing with accident prevention are not adequate and need revision". He recommended measures: (a) to bring the subject of accident prevention in all the industries included in Schedule 1 (except mining) under the jurisdiction of the Board; (b) to give the Board power to investigate all places of employment to determine the adequacy of safety measures; (c) to make rules and

regulations with respect to safety requirements and measures to prevent industrial diseases; (d) to carry on safety education and (e) to appoint advisory committees, representative of management and labour, to assist in establishing standards of safety and to recommend rules and regulations.

Not only have none of his recommendations been carried out, the Board now has, if anything, a weaker role and less jurisdiction in the matter of accident prevention than it had at the time when he made his report.

On April 7, 1960, shortly after the tragic loss of several lives in a tunnelling accident at Hogg's Hollow, a Royal Commission on Industrial Safety was appointed under the chairmanship of His Honour Judge P.J. McAndrew. The Commission repeated the demand for more effective co-ordination of accident prevention work. Indeed the precise recommendation of Mr. Justice Roach for an amendment to The Workmen's Compensation Act (summarized above) was recommended again verbatim (pp. 20-21) by the McAndrew Commission.

The McAndrew Commission criticized the functioning of the Accident Prevention Associations, established under the authority of s. 117 of the Act, because of their attitude, their limited authority and the lack of any provision for participation by labour in their work. The report stated, at p. 19, "The attitude of the associations is one of complacency with respect to their present functions, which are largely educational. Some of the associations employ inspectors or safety counsellors; but the inspectors, who are representatives of the employers, have no authority to enforce safety measures...few (rules) have been made, and none enforced, due no doubt to the ambiguity of the meaning of 'rules'... The complaint of labour is that the work of the accident prevention associations does not penetrate below the rank of foreman, and this is a valid complaint." The Commission then quoted with approval Mr. Justice Roach's statement that "My first criticism of the present system is that it does not provide any means which will ensure the active participation

of labour in the work of accident prevention. My second criticism is that the relationship between the Board and the associations is much too remote."

Again the McAndrew Commission repeated Mr. Justice Roach's recommendations for amendments to the Act which would strengthen the Associations, make them representative of labour as well as management and strengthen and co-ordinate their accident prevention efforts.

Instead, the Act has been amended to limit the function of these associations to "education in accident prevention" thus only weakening them still further.

There has been a nod in the direction of labour participation through the establishment of the Labour Safety Council of Ontario under an amendment to the Department of Labour Act (Stat. of Ont. 1961-62, c. 32). This, however, is a poor substitute for the active labour participation in accident prevention envisaged and recommended by both the Roach Commission and the McAndrew Commission through supervision of the work of strengthened and more authoritative accident prevention associations and the work of accident prevention committees at the plant level.

Some work in the field of preventing industrial disease is now being done by the Environmental Health Branch (formerly the Industrial Hygiene Branch) of the Department of Public Health. It is our opinion that the industrial hygiene work of this branch is less adequate and less effective than it should be and we respectfully recommend that it be brought directly under the jurisdiction of the Workmen's Compensation Board.

At present the work of the branch is on a consultative and service basis. An investigation of a particular health hazard is made by the branch only if it is specifically referred to them by an employer, employee, the Department of Labour, etc. The technical experts of this branch go out with an inspector of the Department of Labour or Mines, --- if a specific problem has been raised.

The Branch undertakes no surveys on its own initiative and does no research work on the causes of industrial disease or on the effect of

various work conditions on health of employees. The branch does not provide the Workmen's Compensation Board with copies of its report and recommendations after one of its investigations is completed. Neither is a copy provided to the union --- even if an investigation has been undertaken as a result of a request or complaint by the union, though they are informed orally of the general results of the investigation.

The branch employs only one engineer for the province to handle all investigations in all industries, into physical conditions, such as noise levels, vibrations, non-ionizing radiation, heat, etc., which may be hazardous to health. Obviously such a limited staff could not do an adequate job if the Branch took the initiative in making industrial health surveys or in doing research into industrial disease.

In contrast, in British Columbia, industrial hygiene is under the jurisdiction of the Workmen's Compensation Board and the B.C. Board undertakes a wide range of programs aimed at improving working conditions and at reducing the incidence of industrial disease. The following excerpts from the 1965 report of the B.C. Workmen's Compensation Board are quoted to show the scope of the B.C. programs in this field:

> "A total of 225 inspections, surveys, and investigations was made in industrial operations during 1965 to study the health aspects of the industrial environments. Evaluation of the chemical and physical agents which cause industrial diseases and the development of controls to ensure compliance with the Workmen's Compensation Board regulations come within the scope of the Industrial Hygiene Division.
>
> "Detailed noise surveys were made in noisy industries to evaluate noise exposure and to develop suitable hearing-conservation programmes. Results of surveys demonstrate the need for noise reduction or ear protection in many operations. Industrial operations surveyed included sawmills, planer-mills, plywood manufacture, logging, shingle-mills, pulp-mills, paper-converting, printing, chemical manufacture, engine maintenance, rope manufacture, and gas transmission.
>
> "A total of 520 body-fluid samples was analysed for lead to determine lead absorption by workmen in lead-battery plants and lead-reclamation plants. Atmospheric samples were also collected where lead absorption indicated a possible dust or fume problem, and corrective action was prescribed for control.
>
> "The application of new types of protective coating to steel and wood surfaces was studied, and the exposure to hazardous materials evaluated. Specification of protective coatings containing injurious or highly flammable materials is creating special health problems that require controls. Application of protective coatings by airless spray equipment and electrostatic spraying also presents new problems in control.

"Industrial contacts and exposures were also investigated in operations manufacturing: cement, plastics, acetylene, cable, wire cloth, chemicals, textiles, copper tubing, metal containers, ornamental ironwork, neon tubes, fertilizers, tires, coffee and tea, drill alloys, and in smelters, laundries, shipyards, furniture, protective coatings, bakeries, hospitals, engine maintenance, fruit-packing, bridge steel, water and sewage treatment, and springs.

"Claims for dermatitis constitute the largest group of industrial diseases covered by the Schedule of Industrial Diseases. Inadequate protection for repeated contact with many industrial agents eventually results in a breakdown of the protective mechanism of the skin, and dermatitis results. Improvements in personal protection and improved methods of use of potential skin irritants is necessary.

"A total of 1,061 claims for industrial diseases was filed in 1965.

"A total of 97 ventilation and dust surveys was made during 1965 to evaluate exposures to pneumoconiosis-producing dusts and to determine the effectiveness of dust-control measures.

"Dust concentrations were determined with a konimeter at underground construction projects, fertilizer plants, stone-cutting and dressing, asphalt-mixing plants, rock-crushing plants, and other industrial plants where there was an exposure to rock dust.

"The use of mechanical excavators in a sewer-tunnel project and a water-main project presented special dust and ventilation problems. The ventilation fans were operated on exhaust duty from the face work area, and where feasible, water sprays were used as a dust-suppression measure on the excavator cutter-head. The results of dust surveys are being studied to determine the ventilation requirements and other measures necessary to provide more effective dust control to maintain a healthy environment.

"Requirements for control of dust at asphalt-mixing plants and at rock-crushing plants were issued October 1, 1964. Dust surveys in asphalt-mixing plants during 1965 demonstrated that satisfactory dust control was achieved in several plants, but most of the plants require improvements in dust control. A few rock-crushing plants installed water sprays at the jaw and rolls crushers as a dust-suppression measure. The water sprays installed to date have not reduced the dust concentrations to a satisfactory level. Other means of dust control will be tested.

"Investigations continue regarding dust-control methods for drilling operations with air-leg and sinker machines used during the construction of logging-roads. Satisfactory results on dust control are being obtained with the water-detergent method at the self-propelled rock-drill units used on road construction.

"Tests were made for noxious gases and combustible gases at tunnelling operations for road construction, water mains, sewer tunnels, dam construction, and hydro-development projects."

It is respectfully submitted that work of the kind indicated in this report will ultimately more than pay for itself, not only in terms of reduced compensation costs, but far more important, in terms of healthier happier people. So far as is known, little or none of such work is going forward in Ontario.

Accident prevention in industry is now divided among several bodies under various acts, including The Industrial Safety Act, 1964 (Stat. of Ont. 1964, c. 45), The Construction Safety Act, 1961-62 (Stat. of Ont. 1961-62, c. 18), The Elevators and Lifts Act, (R.S.O. 1960 c. 119), The Trench Excavators' Protection Act, (R.S.O. 1960, c. 407), The Construction Hoists Act, 1960-61 (Stat. of Ont. 1960-61, c. 11), The Loggers' Safety Act, (Stat. of Ont. 1962-63, c. 76), The Department of Labour Act, (R.S.O. 1960, c. 97), etc.

Co-ordination is very limited and inadequate. The Labour Safety Council of Ontario has been established under an amendment to the Department of Labour Act and is comprised of the Presidents of the seven accident prevention associations together with seven labour representatives. This body, which for the first time gives labour some voice in safety matters at a high level, is undertaking some useful work in initiating the development of a safety code and some research on causes of accidents.

But the functions of the Council are advisory only and it cannot undertake the co-ordination and over-all supervision of safety measures which is required.

One of the anomolies of the present decentralized jurisdiction over and lack of co-ordination of accident prevention is that by section 167 of the Mining Act (R.S.O. 1960, c. 241) certain medical examinations are required of persons employed in dust exposure occupations. But these examinations may only be made by medical officers appointed for that purpose under The Workmen's Compensation Act. It is respectfully submitted that the provisions of Section 167 of The Mining Act should be transferred to The Workmen's Compensation Act.

Similarly Section 198 of The Mining Act provides that first aid supplies shall be maintained at every mine as "required by the regulations under The Workmen's Compensation Act". There is, however, no special provision in the regulations for first aid requirements for miners, as there is in Section 19 of the regulations for bush workers, despite the need for special first aid equipment in the case of mining accidents.

the

It is therefore recommended that the provisions of Section 198 of The Mining Act be transferred to The Workmen's Compensation Act and that provision be made in the regulations for the same first aid requirements as are contained in Section 19 of the regulations for employers of bush workers with the following additions:

"f) a metal mesh basket and one hemp rope and one marlin rope;

"g) a low-built white truck on rails which can be pushed to the shaft for the transportation of injured workers".

One or two of the safety acts, mentioned previously, provide for some co-ordination with the Workmen's Compensation Board but these provisions are minimal and inadequate. For example, Section 48 of Ontario Regulation 196/64 made under The Industrial Safety Act (Stat. of Ont. 1964, c. 45) provides that a copy of the accident report required under Section 115 of The Workmen's Compensation Act may be accepted for purposes of The Industrial Safety Act. A similar provision has been made in Sec. 9 (3) of The Loggers' Safety Act (Stat. of Ont. 1962-63, c. 76). It is our contention that all industrial accidents should be reported to the Workmen's Compensation Board and that copies of such reports be made available to employees and to any organization of employees requesting them.

It is respectfully submitted that the proper body to undertake overall co-ordination and supervision of industrial safety and industrial hygiene in Ontario is The Workmen's Compensation Board.

The Commission's attention is drawn to the fact that in Alberta, British Columbia, Newfoundland and Saskatchewan, accident prevention comes under the jurisdiction of the Workmen's Compensation Boards of those provinces.

All of which is respectfully submitted.

UNITED STEELWORKERS OF AMERICA

Dated at Toronto this 15th day of September, 1966.

D.M. Storey - Director
Lorne Ingle - Solicitor

APPENDIX

SUMMARY OF RECOMMENDATIONS

It is respectfully submitted that provision should be made to:

1. Extend coverage to those engaged in rescue and protective work after an explosion, fire or accident.

2. Eliminate three-day waiting period.

3. Extend compensation to all injuries whether or not the workman is disabled from earning wages.

4. Authorize compensation for clothing, dentures, artificial limbs and eyeglasses damaged or broken as a result of a compensable accident.

5. Eliminate Schedule 2 of the Act.

6. Restore previous review and appeal procedures.

7. Increase maximum rate of compensation to 85%.

8. Adjust pensions and allowances annually in accordance with changes in the cost of living.

9. Pay full compensation in every case where an injured workman cannot, as a result of his injury, obtain employment.

10. Increase widow's pension to 75% of the workman's earnings or $100 per month, whichever is greater, and other dependents' allowances proportionately.

11. Continue allowances beyond the age of 16 for dependent children in school.

12. Increase burial expenses to $700 and authorize payment for cremation as well as burial.

13. Remove $6,000 limit on earnings and assessments.

14. Extend list of industrial diseases in Schedule 3.

15. Pay compensation to full extent of injuries where an accident aggravates a pre-existing condition.

16. Give the Workmen's Compensation Board over-all jurisdiction over accident prevention with authority to make and enforce safety measures and measures to prevent industrial diseases.

17. Provide for active labour participation in accident prevention at all levels.

18. Transfer responsibility for industrial hygiene to the Board and provide for surveys, research and other initiative in this field.

19. Transfer the provisions of Sections 167 and 198 of The Mining Act to The Workmen's Compensation Act.

20. Require the reporting of all industrial accidents to The Workmen's Compensation Board.

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